

2017 FEB 27 PM 3: 20

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
)
 MUR 7071) DISMISSAL AND
 Mike Bishop for Congress) CASE CLOSURE UNDER THE
 and Valerie Tillstrom, Treasurer) ENFORCEMENT PRIORITY **CELA**
) SYSTEM
)

GENERAL COUNSEL'S REPORT

Under the Enforcement Priority System ("EPS"), the Commission uses formal scoring criteria as a basis to allocate its resources and decide which matters to pursue. These criteria include without limitation an assessment of the following factors: (1) the gravity of the alleged violation, taking into account both the type of activity and the amount in violation; (2) the apparent impact the alleged violation may have had on the electoral process; (3) the complexity of the legal issues raised in the matter; and (4) recent trends in potential violations of the Federal Election Campaign Act of 1971, as amended (the "Act"), and developments of the law. It is the Commission's policy that pursuing relatively low-rated matters on the Enforcement docket warrants the exercise of its prosecutorial discretion to dismiss cases under certain circumstances. The Office of General Counsel has scored MUR 7071 as a low-rated matter and has determined that it should not be referred to the Alternative Dispute Resolution Office.¹

For the reasons set forth below, the Office of General Counsel recommends that the Commission exercise its prosecutorial discretion to dismiss the allegations that Mike Bishop for Congress and Valerie Tillstrom in her official capacity as treasurer (the "Committee") failed to insert a disclaimer on a third-party website used to process contributions to Mike Bishop's campaign in violation of 52 U.S.C. § 30120(a)(1) and 11 C.F.R. § 110.11(a)(1), (b)(1).

¹ The EPS rating information is as follows:
Filed: June 14, 2016.

1704444-13613

1 The Complaint alleges that on March 29, 2016 the Committee sent an email to “voters”
2 soliciting donations to Mike Bishop’s campaign.² There is no dispute that the email contained a
3 correct disclaimer.³ The email, however, urged readers to follow a hyperlink to a rally.org
4 webpage (“the Rally Webpage”) – a third-party website the Committee used to process
5 contributions.⁴ Although the Rally Webpage contained the statement “Created by Mike Bishop
6 for Congress” and was entitled “Mike Bishop for Congress,” the Complaint alleges that the
7 Committee failed to use the specific words “paid for” by Mike Bishop for Congress on the Rally
8 Webpage.⁵

9 The Committee responds that a disclaimer was not required on the Rally Webpage. The
10 Committee asserts that the creation of the Rally Webpage was a free service, although rally.org
11 charged a 5% fee to process contributions.⁶ Additionally, pursuant to Rally’s terms of service,
12 the Committee did not own the Rally Webpage. Instead, rally.org granted the Committee a
13 license for the page that it could revoke at will.⁷ Notwithstanding these arguments, the
14 Committee inserted a “paid for” disclaimer at the bottom of the Rally Webpage shortly after
15 learning of the Complaint.⁸

² Compl. at 2; *see id.*, Ex. A.

³ The email also contained a partially inaccurate “best efforts” notification. *See* 11 CFR § 104.7(a)-(b). It refers to individuals whose contributions “aggregate in excess of \$200 in a *calendar* year,” whereas 11 C.F.R. § 104.7(b) states that for an authorized committee, such as the Bishop Committee, the time period is “an *election cycle*.”

⁴ Compl., Ex. B.

⁵ Compl. at 2.

⁶ Resp. at 2; *see also* <https://rally.org/corp/online-fundraising> (last visited Feb. 7, 2017).

⁷ Resp. at 3; *see also* Rally User Agreement Terms of Services, Section 6 (last updated: April 12, 2013), <https://rally.org/corp/eula>.

⁸ Resp. at 4-5; *see also* <https://rally.org/covers/b9PEeejfoN5/contribute> (last visited Feb. 14, 2017).

1 All "public communications" made by a political committee must contain appropriate
2 disclaimers.⁹ A public communication includes "general public political advertising," which
3 excludes "communications over the Internet, except for communications placed for a fee on
4 another person's Web site."¹⁰ Further, disclaimers are required for "all Internet websites of
5 political committees available to the general public."¹¹

6 Under these particular facts, it is not entirely clear whether the Committee was required
7 to insert a disclaimer on the Rally Webpage. However, the information before the Commission
8 indicates there was little chance that the public was misled by the landing page. The email,
9 which contained a proper disclaimer, directed potential contributors to the Rally Webpage, and
10 the Rally Webpage provided enough identifying information to inform the potential contributor
11 that the Committee authorized it.¹² Moreover, shortly after learning of the Complaint, the
12 Committee inserted a "paid for" disclaimer on the bottom of the Rally Webpage.

13 In light of the *de minimis* nature of the alleged violation, the unlikelihood that the public
14 was misled by the Rally Webpage, and the Committee's remedial actions, the Office of General
15 Counsel recommends that the Commission exercise its prosecutorial discretion to dismiss the
16 allegations that Mike Bishop for Congress and Valerie Tillstrom in her official capacity as
17 treasurer failed to insert a disclaimer on the Rally Webpage in violation of 52 U.S.C.

⁹ 11 C.F.R. § 110.11(a)(1).

¹⁰ 11 C.F.R. § 100.26; *see also* Explanation and Justification for the Regulations on Internet Communications, 71 Fed. Reg. 18,589, 18,593-94 (Apr. 12, 2006).

¹¹ 11 C.F.R. § 110.11(a)(1).

¹² *See* Factual and Legal Analysis at 5-6, MUR 7039 (Sanders 2016, *et. al*) (dismissing alleged disclaimer violation where there was information sufficient to demonstrate that Sanders's committee had authorized the ad).

§ 30120(a)(1) and 11 C.F.R. § 110.11(a)(1), (b)(1).¹³ Additionally, this Office recommends that the Commission approve the attached Factual and Legal Analysis and the appropriate letters, and close the file.


RECOMMENDATIONS

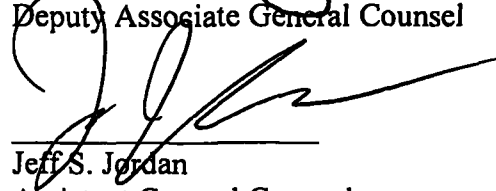
1. Dismiss the allegations that Mike Bishop for Congress and Valerie Tillstrom in her official capacity as treasurer violated 52 U.S.C. § 30120(a)(1) and 11 C.F.R. § 110.11(a)(1), (b)(1);
2. Approve the attached Factual and Legal Analysis and the appropriate letters; and
3. Close the file as to all Respondents.

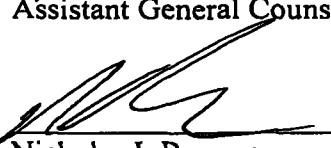
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¹³ *Heckler v. Chaney*, 470 U.S. 821 (1985).